

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 4**

4 (By Senators Mullins, Boley, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Sypolt, Blair,
5 Kirkendoll, Stollings and Cole (Mr. President))

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7 [Originating in the Committee on Energy, Industry and Mining;
8 reported January 28, 2015.]
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12 A BILL to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating
13 to development of a state plan under Section 111(d) of the Clean Air Act; requiring the
14 Department of Environmental Protection, in consultation with other state agencies, to study
15 feasibility of a state plan; permitting the Department of Environmental Protection to create
16 a mass-based state plan; requiring standards considered by Department of Environmental
17 Protection in drafting plan to be unit specific; requiring the Department of Environmental
18 Protection to submit report to the Legislature determining whether a state plan is feasible
19 and, if so, recommending a proposed state plan to the Legislature; providing any state plan
20 created by the Department of Environmental Protection have no legal effect under certain
21 circumstances; and requiring approval of the Legislature before any state plan is submitted
22 to the United States Environmental Protection Agency.

23 *Be it enacted by the Legislature of West Virginia:*

1 That §22-5-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

3 **ARTICLE 5. AIR POLLUTION CONTROL.**

4 **§22-5-20. Regulating carbon dioxide emissions from existing fossil fuel-fired electric
5 generating units; creation of a state plan requiring Legislature approval.**

6 (a) The Department of Environmental Protection, in consultation with other state agencies,
7 shall, no later than one hundred eighty days after a rule is finalized by the United States
8 Environmental Protection Agency that requires the state to submit a state plan under Section 111(d)
9 of the Clean Air Act, 42 U. S. C. § 7411(d), submit to the Legislature a report regarding the
10 feasibility of the state's compliance with the Section 111(d) rule. The report must include a
11 comprehensive analysis of the effect of the Section 111(d) rule on the state, including, but not limited
12 to, the need for legislative or other changes to state law, and the factors referenced in subsection (e)
13 of this section. The report must make at least two feasibility determinations: (1) Whether the
14 creation of a state plan, either rate based or mass based, is feasible based on the comprehensive
15 analysis; and (2) whether the creation of a state plan is feasible within the time period extending no
16 later than the first day of the last regular session of the Legislature that occurs before the deadline
17 to submit a state plan to the Environmental Protection Agency under the Section 111(d) rule,
18 assuming no extensions of time are granted by the Environmental Protection Agency. If the
19 department determines that a state plan is or is not feasible under subdivision (1) of this subsection,
20 the report must explain why. If the department determines that a state plan is not feasible under
21 subdivision (2) of this subsection, it shall explain how long it requires to create a state plan and then
22 endeavor to submit such a state plan to the Legislature as soon as practicable. If the department
23 determines that the creation of a state plan is feasible under both subdivisions (1) and (2) of this

1 subsection, it shall submit the proposed state plan to the Legislature within the time period
2 contemplated by subdivision (2) of this subsection. In any event, the department shall publish the
3 report and any proposed state plan on its website.

4 (b) If the department proposes a state plan to the Legislature in accordance with subsection
5 (a) of this section and the plan contains performance standards it, in consultation with the
6 Department of Environmental Protection Advisory Council, shall ~~establish~~ propose separate
7 standards of performance for carbon dioxide emissions from existing coal-fired electric generating
8 units in accordance with subsection ~~(b)~~ (c) of this section and from existing natural gas-fired electric
9 generating units in accordance with subsection ~~(c)~~ (d) of this section. The standards of performance
10 developed and proposed under any state plan to comply with Section 111 of the Clean Air Act
11 should allow for greater flexibility and take into consideration the additional factors set forth in
12 subsection ~~(d)~~ (e) of this section as a part of any state plan to achieve targeted reductions in
13 greenhouse gas emissions which are equivalent or comparable to the goals and marks established
14 by federal guidelines.

15 ~~(b) (c) Standards~~ Unit-specific standards of performance for existing coal-fired electric
16 generating units. -- Except as provided under subsection ~~(d)~~ (e) of this section, the standard of
17 performance ~~established~~ proposed for existing coal-fired electric generating units under subsection
18 (a) of this section shall be unit specific and based upon:

19 (1) The best system of emission reduction which, taking into account the cost of achieving
20 the reduction and any nonair quality health and environmental impact and energy requirements, has
21 been adequately demonstrated for coal-fired electric generating units that are subject to the standard
22 of performance;

23 (2) Reductions in emissions of carbon dioxide that can reasonably be achieved through

1 measures undertaken at each coal-fired electric generating unit; and

2 (3) Efficiency and other measures that can be undertaken at each coal-fired electric generating
3 unit to reduce carbon dioxide emissions from the unit without switching from coal to other fuels or
4 limiting the economic utilization of the unit. ~~and~~

5 ~~(4) Additional regulatory mechanisms that provide flexibility in complying with the~~
6 ~~standards, including: (A) Emissions trading with credited reduction for any unit that was in~~
7 ~~operation January 1, 2011, or thereafter, and fleet wide averaging; (B) other alternative~~
8 ~~implementation measures that are determined to further the interests of West Virginia and its citizens~~
9 ~~including state programs such as clean energy programs that mandate reduced energy consumption~~
10 ~~resulting in avoided emissions, emission reductions, or a reduction in the state's carbon dioxide~~
11 ~~intensity whereby the state shall credit equally based on the output to the generators located in the~~
12 ~~state that are subject to carbon dioxide performance standard rules under Section 111(d) of the Clean~~
13 ~~Air Act.~~

14 ~~(c)~~ (d) Standards *Unit-specific standards of performance for existing natural gas-fired*
15 *electric generating units.* -- Except as provided in subsection ~~(d)~~ (e) of this section, the standard of
16 performance ~~established~~ proposed for existing gas-fired electric generating units under subsection
17 ~~(a)~~ (b) of this section shall be based upon:

18 (1) The best system of emission reduction which, taking into account the cost of achieving
19 the reduction and any nonair quality health and environmental impact and energy requirements, has
20 been adequately demonstrated for natural gas-fired electric generating units that are subject to the
21 standard of performance;

22 (2) Reductions in emissions of carbon dioxide that can reasonably be achieved through
23 measures at each natural gas-fired electric generating unit; and

1 (3) Efficiency and other measures that can be undertaken at the unit to reduce carbon dioxide
2 emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting
3 the economic utilization of the unit.

4 ~~(d)~~ (e) *Flexibility in establishing unit-specific standards of performance*. -- In developing
5 a flexible state plan to achieve targeted reductions in greenhouse gas emissions, the department of
6 ~~Environmental Protection~~ shall endeavor to establish an achievable standard of performance for any
7 existing fossil fuel-fired electric generating unit, and examine whether less stringent performance
8 standards or longer compliance schedules may be implemented or adopted for existing fossil
9 fuel-fired electric generating units in comparison to the performance standards established for new,
10 modified or reconstructed generating units, based on the following:

11 (1) Consumer impacts, including any disproportionate impacts of energy price increases on
12 lower income populations;

13 (2) Nonair quality health and environmental impacts;

14 (3) Projected energy requirements;

15 (4) Market-based considerations in achieving performance standards;

16 (5) The costs of achieving emission reductions due to factors such as plant age, location or
17 basic process design;

18 (6) Physical difficulties with or any apparent inability to feasibly implement certain emission
19 reduction measures;

20 (7) The absolute cost of applying the performance standard to the unit;

21 (8) The expected remaining useful life of the unit;

22 (9) The impacts of closing the unit, including economic consequences such as expected job
23 losses, if the unit is unable to comply with the performance standard;

1 (10) Impacts on the reliability of the system; and

2 (11) Any other factors specific to the unit that make application of a modified or less
3 stringent standard or a longer compliance schedule more reasonable.

4 ~~(e) (f) State plan requirement~~ Legislative approval required for any state plan proposed
5 under Section 111(d) of the Clean Air Act. -- The department of Environmental Protection shall
6 ~~propose or~~ or any other agency or officer of state government may not submit to the U. S.
7 Environmental Protection Agency a state plan ~~which includes achievable performance standards for~~
8 ~~existing sources, and a combination of additional measures designed to meet the U. S.~~
9 ~~Environmental Protection Agency's guidelines, consistent with the considerations, goals and~~
10 ~~parameters set forth in this section.~~ under this section, or otherwise pursuant to Section 111(d) of the
11 Clean Air Act, without the express approval of both houses of the Legislature by concurrent
12 resolution. If both houses adopt the concurrent resolution under this subsection, the department may
13 submit the state plan to the Environmental Protection Agency for consideration. If either house of
14 the Legislature fails to adopt the concurrent resolution under this subsection, the department may not
15 submit the state plan to the Environmental Protection Agency for consideration.

16 (g) Legal effect. -- Any state plan approved by the Legislature pursuant to this section shall
17 have no legal effect if:

18 (1) the Environmental Protection Agency fails to issue, or withdraws, its federal rules or
19 guidelines for reducing carbon dioxide emissions from existing fossil fuel-fired electrical generating
20 units under 42 U. S. C. §7411(d); or,

21 (2) a court of competent jurisdiction invalidates the Environmental Protection Agency's
22 federal rules or guidelines issued to regulate emissions of carbon dioxide from existing fossil fuel-
23 fired electrical generating units under 42 U. S. C. §7411(d).

1 (h) Effective date. -- All provisions of this section are effective immediately upon passage.

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(NOTE: The purpose of this bill is to provide a procedure for the development of a state plan under section 111(d) of the Clean Air Act. It requires the Department of Environmental Protection to study the feasibility of a state plan and to submit a report to the Legislature determining whether a state plan is feasible, and, if so, recommending a proposed state plan to the Legislature. It also requires the approval of the Legislature before a state plan is submitted to the United States Environmental Protection Agency.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)